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SIPDIS

SENSITIVE

FOR L/CID, WHA/EPSC, WHA/CEN
FOR EB/IFD/OIA (JROSELLI)

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SUBJECT: 2005 EXPROPRIATION REPORT: HONDURAS

REF: Dunn/Roselli telcon of April 6

1. (U)
HONDURAS

The United States Government (USG) is aware of thirteen (13) claims of United States businesses or nationals that may be outstanding against the Government of Honduras (GOH). The USG is also aware of numerous other investment disputes involving U.S. investors, the majority of which have arisen out of inadequate titling procedures and involve private Honduran citizens.

2. (U) Eight of the claims described below involve the Honduran National Agrarian Institute (INA) and land invasion by squatters. Land invasions are common for both Honduran and foreign landowners. According to the National Agrarian Reform Law, idle land fit for farming can be expropriated and awarded to the landless poor. Generally, an INA expropriation case begins after squatters target and invade unprotected property. The squatters then file for the land with the INA under the Agrarian Reform Law. In most cases, pursuing the subsequent legal avenues have proven to be costly, time consuming, and have rarely led to positive results. The U.S. Embassy is actively engaged in dialogue with the INA and claimants to encourage resolution of outstanding disputes. Most cases reported below require further legal action in Honduran courts by the claimants or decisions by the court.

3. (SBU) Claimant A

Claimant A's family land, known as Jerico, was taken over by the Mayor of Trujillo in 1985. That same year, the Municipality began titling and selling off parcels of Claimant A's land. By 1991, Claimant A had won every court case up through the Supreme Court level, thereby declaring Claimant A's family as the legal owners of Jerico lands. Claimant A requested that the public registrar's office inscribe the court's rulings and correct the situation in the public registry, having falsely registered the illegal titles. To date, the Municipality of Trujillo has not returned the parceled sections of land to Claimant A's family. In May 2002, after Embassy advocacy, the public registrar informed the Embassy that Claimant A's lands were officially inscribed in the registry. Legally, that office can no longer register titles issued by the Municipality for Jerico lands. Claimant A alleges that the Municipality continues to title and sell Jerico lands under a different name (Capiro).

In April 2003, the Embassy informed Claimant A of the GOH's temporary arbitration procedure (Decreto No. 349-2002) that allowed the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. Claimant A informed the Embassy the family was interested in entering into arbitration with the Municipality but did not have the agreement of the Municipality. The Municipality instead proposed to draft a private settlement with Claimant A's family.

In early 2004, Claimant A and the Municipality signed an agreement to resolve the conflict. Claimant A agreed to not pursue additional legal action and respect the rights of those third parties who purchased land from the Municipality, if the Municipality would return the remainder of the land. The Municipality agreed to not sell any more of Claimant A's land and register and return the remainder of Claimant A's land. Despite this agreement, Post has been informed that the Municipality continued selling Claimant A's land.

In March of 2005, the representative of Claimant A informed the Embassy that they will take advantage of Decree No. 82-2004 (New Property Law, which created the Property Institute) and through this entity they will try to resolve this dispute.

4. (SBU) Claimant B

Claimant B inherited 2,417 acres of land from his father. Claimant B's dispute started in 1963 when peasant groups squatted on his father's land. Allegedly in 1975, INA signed a letter of intent to purchase the land but never did. In 1984, when small farmers began squatting on Claimant B's land near Nacaome, Valle Department, Claimant B again offered to sell the land to INA. Claimant B reported he has documents showing that the INA

intended to initiate expropriation proceedings in 1989, though it is not entirely clear that this process was ever actually started. Claimant B reports that in 1992, INA responded it was no longer interested in purchasing the land. INA decided not to follow through with the expropriation order but instead suggested that Claimant B sue to have the squatters removed. Claimant B could remove the liens in civil-court procedures and get a court order to remove the squatters. Due to Claimant B's ill health, legal proceedings were never initiated.

In June 2002, Claimant B's son reported that a court case is still an option. In April 2003, the Embassy informed Claimant B of the GOH's temporary arbitration procedure (Decreto No. 349-2002) that allowed the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. Claimant B indicated he will not pursue arbitration due to reservations about the arbitration procedure. The Embassy considers this case inactive at this time, pending further action by Claimant B.

15. (SBU) Claimant C

In 1990, Claimant C's land in Cofradia, Cortes Department, was invaded by a group of squatters. In 1992, the INA issued a certification of occupation (title) to the squatters. Claimant C reports difficulty in discussing the case with GOH officials, who claim not to have taken action against the land. In 1995, INA realized this land is classified as urban and, therefore, claimed to have no authority to resolve the dispute. The agency said it can neither give the land to the squatters nor evict them. In 1996, the INA also reported that others have claims to the land in addition to the squatters and Claimant C. In December 1998, INA issued a resolution denying a petition presented by Claimant C to annul the title (formerly issued by INA) held by the campesino squatters. Claimant C has not contested the granting of this title in court.

At various times in recent years, the Embassy has assisted Claimant C in communicating with INA concerning his claim. In June 2002, Claimant C reported that he may seek to evict the squatters in court. In April 2003, the Embassy informed Claimant C of the GOH's temporary arbitration procedure (Decreto No. 349-2002) that allowed the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. The Embassy did not receive a response from Claimant C concerning arbitration before the time to file expired. To date the Embassy has not received any information from Claimant C and considers this case inactive at this time, pending further action by the claimant.

16. (SBU) Claimant D

Claimants D are a U.S. citizen brother and sister with 42 hectares of property near Balfate, Atlantida Department. Claimants D report squatter problems beginning in 1974 when the INA reportedly placed squatters "temporarily" on their land. Despite repeated promises from GOH officials, no action has been taken to evict these squatters. A group of squatters, who arrived more recently and who repeatedly threatened the owners, was removed by Honduran authorities at the request of the Embassy, which has worked extensively on Claimants' behalf. According to INA attorneys, INA began proceedings in 1974 to expropriate much of the land belonging to Claimants D.

In late 1995, INA officials told the Embassy that it was planning to formally expropriate a portion of the property, not including valuable beachfront, and compensate Claimants D. In 1997, GOH officials confirmed this remained their intention. One of the Claimants visited the Embassy and reiterated opposition to the expropriation. While in the past Claimants D had reportedly contracted with a lawyer to prosecute their claim, the Embassy has no current knowledge regarding the status of Claimants D's legal actions. The most recent information received by the Embassy confirms that INA is in the final stages of expropriating the property. In April 2003, the Embassy informed Claimants D of the GOH's temporary arbitration procedure (Decreto No. 349-2002) that allowed the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. Claimants D decided against pursuing arbitration, citing reservations about the procedure. Claimants D have not requested Embassy assistance since 1996. The Embassy considers this case inactive at this time, pending further action by the claimant.

17. (SBU) Claimant E

Claimant E contacted the Department of State in July 1996, alleging that his property, which he had leased from INA and then developed into a large banana plantation, had been invaded by squatters in 1975 with the encouragement of GOH officials. Claimant E explained that he had previously filed a lawsuit in Honduran courts and lost. Claimant E has exhausted all administrative and legal avenues of recourse, culminating in an unfavorable Supreme Court ruling. Over the years, the Embassy has helped arrange meetings between Claimant E and the President of the Supreme Court, the Vice-President of the country, and the

INA Director.

Current Honduran government officials maintain that while Honduran law requires the payment of compensation for improvements made on leased land that is expropriated under Honduras' land reform laws, the Honduran Supreme Court decision against compensation for Claimant E makes such a settlement impossible. In 2002, the Embassy met with several high-level representatives in the Honduran government to push for consideration of possible forms of resolution of this and similar cases. GOH officials, however, repeatedly state that since this case has been decided at the Supreme Court level, there is nothing more that can be done for Claimant E, and they consider this case closed.

In May of 2004, Claimant E came back to Honduras and visited INA's offices to confirm whether the GOH was going to compensate him. They informed Claimant E that he was not going to be able to receive compensation. The Department of State has reviewed information and evidence provided by Claimant E pertaining to this claim and Claimant E's efforts to resolve it and agreed in March 2005 to undertake a U.S. Government espousal action based upon a denial of justice claim.

18. (SBU) Claimant F

In 1991, a squatter group invaded Claimant F's property near Guaimaca, Francisco Morazan Department. INA issued the squatters a "certificate of occupation" for the land in 1992. The INA subsequently revoked the certificate when Claimant F contested it, but the squatter group remained. Claimant F later offered to give the group a portion of the property to resolve the dispute. The squatters declined the offer and did not allow anyone to enter the land. They threatened violence against people seeking to evict them and several times threatened to kill Claimant F.

Claimant F contacted the Embassy in February 1998 to ask for assistance in resolving the case. In April 1998, Claimant F, Embassy officers, and Claimant F's attorney met with the INA's attorney several times to discuss the case. The INA agreed to work with Claimant F to persuade the squatters to accept Claimant F's prior offer to avoid a court battle.

Working closely with the Embassy, the INA accepted Claimant F's offer to donate 176 hectares of agricultural land to the INA to give to the campesino squatters in return for INA's help in evicting the squatters from the rest of his land. In May 2001, Claimant F filed a criminal suit against the squatters, who were summarily evicted from the property. However, a few of the original squatters reinvaded the land several weeks later. Claimant F indicated that the offer to donate substitute land was conditioned on certain actions by the INA and that the offer had expired.

In January 2003, INA expropriated 176 hectares of Claimant F's land and granted him 80,020.36 lempiras in compensation (USD 4,644.25 - roughly USD 10 per acre). Claimant F's appeal to the National Agrarian Council, for an overturning of the INA's resolution to expropriate his land, was denied. In April 2003, the Embassy informed Claimant F of the GOH's temporary arbitration procedure (Decreto No. 349-2002) that allowed the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. Claimant F decided not to pursue arbitration.

Claimant F died in a car accident in early 2005. Soon after his death, the land was invaded again. Claimant F's brother communicated his interest to come to Honduras and try to resolve this problem. Claimant F's brother has not had any contact with the Embassy since.

19. (SBU) Claimant G

Claimant G purchased land in Comayagua, Comayagua Department, in 1993. A group of campesino squatters subsequently invaded the land and allegedly received INA support. Claimant G won a complaint before the INA and paid the squatters for improvements they made on the land in anticipation of their removal. However, the INA ignored its own ruling, gave title to the squatters, and moved to annul Claimant G's title. On June 30, 1998, a court ruled against Claimant G and ordered revocation of the title. Subsequently, INA accepted the court's ruling and annulled Claimant G's title. In May 2000, Claimant G filed a legal procedure asking for the Supreme Court to review the case. The Embassy understands that this case is still pending. In April 2003, the Embassy informed Claimant G of the GOH's temporary arbitration procedure (Decreto No. 349-2002) that allowed the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. Claimant G filed for arbitration, but the request was denied by the Attorney General's office, citing lack of evidence. The Embassy considers this case inactive at this time, pending further action by the claimant.

10. (SBU) Claimant H

Claimant H owned a fishing boat registered in Florida. When the

boat arrived in Roatan, Bay Islands, Honduras, in 1987, the Honduran Navy allegedly seized it without justification (the claim that there was no justification for the seizure remains unsubstantiated). After years of litigation to recover the boat, Claimant H was notified in 1996 that the Navy had sold the boat in 1989 by executive decree. However, the decree was not published in the official La Gaceta until 1996. Claimant H appealed through the Honduran court system up to the Supreme Court, losing each time on procedural grounds. The Embassy is not aware of any recent developments in this case and considers this case inactive and recommends closure.

11. (SBU) Claimant I

Claimant I owns land near El Progreso, Yoro Department. The land suffered from squatter invasions for more than 30 years. In 1969, Claimant I's now-deceased husband signed an agreement with INA, donating some land to distribute to squatters in return for INA's promise to protect the rest of the land from further invasions. Notwithstanding the 1969 agreement, the INA expropriated an additional parcel of land in 1987 that had been occupied by a separate group of squatters. The new group of squatters subsequently illegally sold the land to a third party not eligible to buy it under the land reform law.

In 1999, INA confirmed that the property belongs to Claimant I and in 2000 issued an eviction order to evict the third-party occupants. The police refused to recognize INA's eviction order. In 2001, the local court rejected Claimant I's request for an eviction, and in June 2002, the Appeals court again ruled against Claimant I. Claimant I informed the Embassy in late 2001 that her attorney had received death threats regarding the case and that the attorney's property had been damaged. The Embassy routinely raises this case with Honduran court and government officials and will continue to assist Claimant I's efforts to recover the land. In April 2003, the Embassy informed Claimant I of the GOH's temporary arbitration procedure (Decreto No. 349-2002) that allowed the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. Claimant I responded she is not interested in pursuing arbitration, nor does Claimant I wish to consider pursuing legal action in Honduran courts. Claimant I indicated the possibility of filing for espousal with the USG.

12. (SBU) Claimant J

Since 1927, Claimant J's Honduran wife's family has owned the title to 44 hectares of urban land in Trujillo, Colon Department. Beginning in the mid 1990s, the land was invaded by squatters. Over the years, Claimant J's family won a total of seven eviction judgments, only to see the land invaded anew after each eviction. In 1999, Claimant J requested from the Municipality of Trujillo permission to divide the property into lots for development. The permission was never granted. In 2000, the property was invaded for the eighth time. In late 2000, before the court ruled on the eviction, the Municipality began expropriation proceedings, effectively freezing the eviction procedure.

Claimant J suspects that the squatters invaded the land with the tacit approval of local political leaders. In a May 2001 meeting with an Embassy officer, the Mayor of Trujillo admitted that the Municipality was expropriating the land but contradicted himself on the justification for the expropriation. Legal documents and correspondence show that Claimant J has not been offered compensation. While the Municipality has finished its administrative procedure to expropriate the property, the case is still pending resolution in court. In a May 2002 meeting with the Ambassador, municipal officials admitted that the previous municipal administration may have made a mistake in expropriating Claimant J's property. The officials stated that the Municipality of Trujillo would respect the decision of the court. Embassy officers consistently urge Honduran court and government officials to reach a fair resolution of this case. Embassy staff has stayed in touch with local law enforcement officials when the situation appears to have potential for violence.

In April 2003, the Embassy informed Claimant J of the GOH's temporary arbitration procedure (Decreto No. 349-2002) that allowed the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. Claimant J showed some interest concerning arbitration but did not file a request with the Attorney General's office. He said he would rather wait for the court ruling. Since then, the Claimant has not contacted the Embassy with additional information.

13. (SBU) Claimant K

Claimant K owned 41 hectares of property on Utila, Bay Islands, to be used to develop a tourism project. Claimant K estimates the value of the property at approximately USD 2.9 million. In 1999, the Ministry of Public Works announced the public tender to build a new airport in Utila on Claimant K's land and subsequently expropriated Claimant K's property without paying compensation. Claimant K requested compensation from the

Ministry of Public Works in late 2001. Embassy officials urged the Ministry on four occasions in 2002 and 2003 to effect prompt and effective compensation. Ministry officials solicited the court in Utila to confirm the legal background regarding the expropriated property. The court has not yet issued its opinion. In June 2002, Ministry officials said that Claimant K's case will be submitted to an inter-agency commission for a determination of the value of the land. In a January 2003 meeting with Embassy officials, Presidential legal advisors were informed of Claimant K's case. The advisors said that they would address the issue of compensating Claimant K with the Minister of Public Works. At the beginning of 2004, this claim was still pending resolution from the Ministry of Public Works. The Embassy did not receive any confirmation that this was done.

In April 2003, the Embassy informed Claimant K of the GOH's temporary arbitration procedure (Decreto No. 349-2002) that allowed the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. In early 2004, Claimant K's attorneys informed the Embassy that this case was in its final stages. They are waiting on a final evaluation to calculate the economic compensation to be awarded. On March 2005, Claimant K's attorney informed the Embassy that the claim has not been resolved yet.

14. (SBU) Claimant L

Claimant L owns land on the southeastern edge of Honduras in territory that was Nicaraguan until the two governments moved the border in 1960. In 1976, Claimant L's father (then owner) filed to register his land with the corresponding land registry office in Honduras but never received any reply. In 2003, when Claimant L inherited the property, she discovered the INA had parceled off and sold almost half of the 3,460 acres of land. In April 2003, the Embassy informed Claimant L of the GOH's temporary arbitration procedure (Decreto No. 349-2002) that allowed the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. On April 10, 2003, Claimant L filed an administrative proceeding with the INA and filed for arbitration. In April 2004, Claimant L's attorney informed the Embassy that the local registrar's office had refused to register the property. Responding to Embassy inquiries, the Supreme Court indicated that the report from the registrar's office stated they were unable to register the land due to a third party registry dating back to 1912, raising additional questions requiring further investigation by Claimant L's attorneys. In March 2005, Claimant L's appeal to the Property Institute was denied. Claimant L's attorneys have indicated they intend to present other legal filings against this resolution.

15. (SBU) Claimant M

In 1995, the Municipality of La Ceiba issued a title for land owned by Claimant M to a local Honduran family. This family in turn sold the land to a third-party family with political influence. Claimant M's attorney filed a lawsuit to cancel said transaction, without success. Only after continued Embassy advocacy was the case finally sent to the Attorney General's office in early 2002. In May 2002, the Attorney General sent the case back to the Municipality of La Ceiba for final resolution, having issued his opinion in favor of Claimant M. On March 28, 2003, the Municipality voted to cancel the title originally issued to the local Honduran family. In April 2003, the Embassy informed Claimant M of the GOH's temporary arbitration procedure (Decreto No. 349-2002) that allowed the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings, but Claimant M decided not to apply. In May 2003, the Honduran party appealed the March decision to cancel the title. In October 2003, the Interior Ministry upheld the ruling in favor of Claimant M. To date, however, the municipality has failed to actually revoke the title. At the end of 2004, M's lawyer presented the case before the Supreme Court. To date, this case has not been resolved by the Court.

16. (SBU) Key to Claimants' Identities:

Claimant A: Eduardo Valenzuela, U.S. citizen, waiver received
Claimant B: Gustavo Valle, U.S. citizen, limited waiver
Claimant C: Carlos Madrid, U.S. citizen, waiver received
Claimant D: Lily Jones Bourne and Edward Purcell Jones, U.S. citizens, no waiver
Claimant E: Alfred McDaniel, U.S. citizen, waiver received
Claimant F: Mark Latty, U.S. citizen, no waiver
Claimant G: Antonia Fajardo de Hubert, U.S. citizen, waiver received
Claimant H: Anthony Fish Company, U.S. company, no waiver
Claimant I: Norma Bogran, U.S. citizen, no waiver
Claimant J: Jaime Castano, U.S. citizen, no waiver
Claimant K: James Harley Crockett, U.S. citizen, no waiver
Claimant L: Maria Cecilia Cerna, U.S. citizen, waiver received
Claimant M: Yolanda Guite, U.S. citizen, no waiver